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No. 94-1732

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

GREGORY DUVALL,

Petitioner,

vs.

CITY OF SANTA MONICA,

Respondent.

On Petition For Writ of Certiorari
To The United States Court of Appeals
For The Ninth Circuit

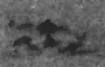
OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

MARSHA JONES MOUTRIE
City Attorney
JOSEPH LAWRENCE
Assistant City Attorney
DEE ANN HAYASHI
Counsel of Record
Deputy City Attorney
1685 Main Street, Room 310
Santa Monica, California 90401
(310) 458-8336

Attorneys for Respondent
CITY OF SANTA MONICA

Lorraine Mitchell Legal Briefs

732 E. WASHINGTON BOULEVARD
LOS ANGELES, CALIFORNIA 90021-3088
(213) 747-5931 • FAX: (213) 747-5943



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STATUTES INVOLVED

U.S. Constitution, Amendment IV states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

42 U.S.C. § 1983 states in relevant part that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

California Welfare & Institutions Code § 5150 states in relevant part that:

When any person, as a result of mental disorder, is a danger to others, or to himself or herself, or gravely disabled, a peace officer. . . may, upon probable cause, take, or cause to be taken, the person into custody and place him or her in a facility designated by the county and

approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondent, City of Santa Monica, respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Ninth Circuit Court of Appeals' opinion in this case.

STATEMENT OF THE CASE

1. Statement of Facts

Petitioner DuVall's Statement of Facts is based on his allegations submitted to the United States District Court in his proposed Findings of Fact. (Pet. for Writ of Cert., at 4, fn.1.) However, respondent City of Santa Monica objected to DuVall's proposed findings (Appellee's Supp. Excerpt of R., at 72, 76), the District Court did not include many of DuVall's proposed findings in the District Court's Findings of Fact (Appellant's Excerpt of R., at 86-89), and the District Court considered but denied DuVall's motion to correct the District Court's Findings of Fact to incorporate DuVall's proposed findings (Appellant's Excerpt of R., at 273.).

The following Statement of Facts is based on the Findings of Fact by the District Court and a transcript of the Santa Monica Police Department tape of the telephone conversations between petitioner DuVall's relatives and police radio transmissions from this incident. (Appellant's

Excerpt of R., at 86-89; Appellee's Supp. Excerpt of R., at 51-70.) In the District Court, DuVall did not dispute the contents of his relatives' phone contacts with the police department. (Appellant's Excerpt of R., at 26.)

On August 13, 1990, at approximately 10:40 p.m., the sister of petitioner Gregory DuVall (hereafter "DuVall") called the Santa Monica Police Department to report that she and her mother had received telephone calls from DuVall, and that DuVall had threatened to kill himself and others. DuVall's sister added that her mother had wanted to go to DuVall's residence, but DuVall's sister would not go, "not when Greg has a gun. I value my life too much." (Appellant's Excerpt of R., at 86; Appellee's Supp. Excerpt of R., at 52, 55.)

When contacted by the police, DuVall's mother confirmed that DuVall was "mad at everybody". She said that DuVall had told her that he had a gun, that he was pointing it at his head, and he wanted her to hear it click. DuVall had stated "I can pull the trigger" and "I feel like going out and killing everybody." (Appellant's Excerpt of R., at 86; Appellee's Supp. Excerpt of R., at 61, 63.) DuVall's mother also stated that DuVall had been suicidal in the past. (Appellee's Supp. Excerpt of R., at 62.)

In response to these phone contacts, police officers went to DuVall's mobile home. They telephoned DuVall

and asked him to come out and speak with them; DuVall refused, said that he had not committed any crime, asked to be left alone, then hung up the phone. DuVall did not answer the telephone when the officers tried to call him again. (Appellant's Excerpt of R., at 87.) Although DuVall initially agreed to throw his gun out to show officers that it was a pellet gun, he ultimately did not relinquish the gun or show it to the officers. He turned off the lights and walked around his trailer with a flashlight. (Appellant's Excerpt of R., at 87; Appellee's Supp. Excerpt of R., at 69-69.)

Believing that DuVall was dangerous to himself and others, the officers attempted to evacuate neighbors, concluded that it was futile to have DuVall exit the trailer voluntarily without the gun, and as a last resort, decided to force entry by use of a battering ram and police dog. They obtained the battering ram and a police dog, and positioned themselves outside the trailer. (Appellee's Supp. Excerpt of R., 65-70.)

The officers forced entry into DuVall's trailer without a warrant. When DuVall appeared in the unlit hallway of the trailer, the officers sent the police dog to apprehend DuVall. (Appellant's Excerpt of R., at 87.)

DuVall was taken into custody and taken to a hospital for treatment of dog-bite injuries to his right ankle

and calf. He was booked for violations of California Penal Code §§ 148 and 148.9 (regarding resisting or obstructing police officers in performance of duties).[1] Later, DuVall was taken to a county hospital for psychiatric evaluation pursuant to California Welfare and Institutions Code § 5150. (Appellee's Excerpt of R., 87.)

2. Proceedings Below

DuVall filed a lawsuit in the United States District Court for the Central District of California against the City of Santa Monica (hereafter "City"), the Chief of Police, and individual police officers, alleging a violation of his civil rights under 42 U.S.C. § 1983, along with pendent state causes of action. (Appellant's Excerpt of R., at 1-5.) On the date set for trial, DuVall dismissed all defendants except for the City. (Appellant's Excerpt of R., at 17.)

On its own motion, the District Court entered summary judgment against DuVall and in favor of the City on the federal claims, and dismissed DuVall's state claims, on the grounds that, viewing the facts in the light most favorable to DuVall, the officers' warrantless entry into DuVall's trailer was supported by probable cause and exigent circumstances, and that the use of the police dog

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[1] These charges against DuVall were subsequently dismissed. (Appellee's Excerpt of R., at 28.)

was constitutional. (Appellant's Excerpt of R., at 33, 40, 89.)

Both DuVall and the City submitted proposed findings of fact and conclusions of law. After the District Court issued its findings of fact and conclusions of law, DuVall moved to correct the District Court's findings of fact and attached excerpts from various depositions of expert witnesses, photographs of dog bite injuries from a Los Angeles Police Department case, and a videotape of a canine-assisted criminal arrest by the Los Angeles Police Department in another case. (Appellant's Excerpt of R., at 101-272.) The District Court issued an order denying DuVall's motion, explicitly stating that it had considered the moving and opposing papers. (Appellants' Excerpt of R., at 273.) DuVall filed a timely notice of appeal. (Appellants' Excerpt of R., at 274.)

The Ninth Circuit Court of Appeals affirmed the District Court's dismissal of DuVall's case. The Court of Appeals found that exigent circumstances justified the warrantless entry into DuVall's trailer and also excused the officers from compliance with knock-announce requirements of 18 U.S.C. § 3109. (App. A3-A4.) The Court of Appeals further held that under California Welfare & Institutions Code § 5150, the officers had probable cause to take DuVall into custody for psychiatric evaluation, and

that use of the dog under the circumstances of this case was objectively reasonable, and therefore did not constitute excessive force. (App. A5, A7.) Because the Court of Appeals found no constitutional violation, the opinion did not address whether a City policy caused the constitutional violation which DuVall alleged. (App. A2.)

DuVall filed a Petition for Rehearing and Suggestion for Rehearing En Banc, which was denied by the Court of Appeals. (Apx. B1.) He then filed a petition for writ of certiorari in this Court.

REASONS FOR DENYING THE WRIT

DuVall does not raise any conflict among the Circuits, nor does he raise any question of significance that justifies review of the Ninth Circuit Court of Appeals' opinion. The questions which he presents are based on mischaracterizations of the facts and of the Court of Appeals' ruling, and his failure to understand that application of constitutional standards in the context of a psychiatric detention is necessarily different than the application in the context of a criminal arrest.

A. The Opinion of the Ninth Circuit Court of Appeals is correct and based on well-established Fourth Amendment principles.

The Court of Appeals' analysis of this case is consistent with well-established Fourth Amendment principles regarding entry of a residence and seizure of a person by law enforcement personnel. DuVall's claims of error are not based on conflicts in case law, but on his failure to distinguish between the application of Fourth Amendment principles in a psychiatric detention context as opposed to a criminal arrest context.

1. The Officers had Probable Cause to Take DuVall into Custody.

As the Court of Appeals stated, seizure of a mentally disturbed person must be supported by probable cause. (Maag v. Wessler, 960 F.2d 773, 775 (9th Cir. 1991).) To constitute probable cause under California Welfare & Institutions Code §5150, a police officer must be aware of facts that would lead a person of ordinary care and prudence to believe, or to entertain a strong suspicion, that the person detained is mentally disordered and is a danger to him or herself or others, or is gravely disabled. (People v. Triplett, 144 Cal. App. 3d 283, 287-288, 192

Cal. Rptr. 537, 540 (1983).)

The Court of Appeals' finding, after review of the facts de novo, that police officers had probable cause to take DuVall into custody for a psychiatric detention is amply supported by the record. The officers had information from DuVall's sister and mother that DuVall had been depressed over how his life was going, that he had "gone a little berserk", that he had threatened to kill himself and told his mother that he had a gun pointed at his head and wanted her to hear it click, whereupon his mother heard a clicking sound over the telephone, that DuVall had said that he "felt like killing everybody" and that he had been suicidal in the past. DuVall specifically stated on the record in the District Court that he did not dispute the communications to the police from DuVall's relatives. (Appellant's Excerpt of R., at 26.)

Furthermore, when the officers arrived at DuVall's trailer, he would not come out to talk to the officers, hung up the phone on them and failed to answer when the officers tried to call him again, failed to show what type of gun he had in his possession, turned out the lights and walked around with a flashlight, then fell silent. This erratic behavior confirmed the information which officers already had that DuVall might be a danger to himself or to others. (See Russo v. City of Cincinnati, 953 F.2d 1036,

1043-1044 (6th Cir. 1992) (exigent circumstances justified entry into home where officers knew the individual was 1)mentally disturbed, 2)possessed two knives; 3) was described as "suicidal", and 4) had turned out the lights and fallen silent).)

2. The Warrantless Entry was Justified by Exigent Circumstances.

This Court has held that exigent circumstances arise when there is a need to protect life or avoid serious injury. (Mincey v. Arizona, 437 U.S. 385, 392 (1978).)

By the very terms of California Welfare & Institutions Code §5150, police officers have probable cause for a psychiatric detention of a person on the basis that the person is a danger to him or herself or to others. This basis for detention also coincides with the presence of exigent circumstances which would justify a warrantless entry. For that reason, no warrant is required to take a person into custody for psychiatric detention. (See Gooden v. Howard County, 954 F.2d 960, 966 (4th Cir. 1992); Russo v. City of Cincinnati, supra, 953 F.2d at 1043-1044.)

Thus, while the Court of Appeals correctly found that a warrant could not have been obtained in time to assure the safety of DuVall or others (App. A-4), in the

exigencies faced by the police officers, a warrant was never necessary to enter the trailer for purposes of taking DuVall into custody for psychiatric evaluation under California Welfare & Institutions Code §5150.

Exigent circumstances, reflected by the officers' reasonable belief that announcement of their presence would endanger themselves or others also excused the officers from the requirement of knocking and announcing their presence before entering the trailer. (United States v. Turner, 926 F.2d 883, 886 (9th Cir. 1991), cert. denied, 502 U.S. ___, 112 S.Ct.103 (1991).)

3. Use of the dog did not constitute excessive force.

The Court of Appeals applied the test espoused in Graham v. Connor, 490 U.S. 386 (1989) for determining whether or not the use of the dog to apprehend DuVall was objectively reasonable: 1) the severity of the crime at issue, 2) whether the suspect poses an immediate threat to the safety of the officer or others, and 3) whether he is actively resisting arrest or attempting to evade arrest by flight. (Id., at 396.)

Although DuVall challenges the Court of Appeals' analysis because there was no crime at issue and DuVall was not resisting arrest, these two factors are never key components in dealing with a psychiatric detention rather

than a criminal arrest. The second Graham factor is a key component of a psychiatric detention -- whether the suspect (here, the detainee) poses an immediate threat to the safety of the officer or others or, as here, to the detainee as well). Significantly, this factor happens also to be the most important of the three Graham factors. (Chew v. Gates, 27 F.3d 1432, 1441 (9th Cir. 1994).

Here there existed an immediate threat to the safety of detainee DuVall, but also to the officers, and to others. There were the initial exigent circumstances, DuVall's suicidal threats and stated desire to kill others, giving rise to the need to enter and take DuVall into custody. Once the entry was made, the officers were exposed to DuVall, whom they had probable cause to believe was armed, suicidal and homicidal, and who was moving in the unlit hallway of his trailer. Faced with these rapidly evolving circumstances, considering the threat to the safety of the officers and DuVall, the need to quickly detain DuVall once the officers were inside the trailer, and confronted with the alternative of using guns or using the dog to apprehend DuVall, the dog handler made the objectively reasonable choice to use the dog, a gesture designed to avoid a violent confrontation.

Viewed in its proper light, the use of the dog was a reasonable attempt to de-escalate the potential for a

deadly confrontation. As Graham held, a standard of reasonableness at the moment applies, and "[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." (Graham v. Connor, supra, 490 U.S. at 396-397.) Amid the uncertain, rapidly evolving events here, the only correct conclusion was that the use of the dog was reasonable.

In addition, DuVall overlooks another critical element in the determination of whether a particular use of force is reasonable: the quantum of force actually used. The Graham factors, and other factors relevant to a determination of the reasonableness of a particular use of force, are to be considered in relation to the amount of force used to effect the particular seizure. (Chew v. Gates, supra, 27 F.2d at 1441.) Here, the District Court specifically evaluated the application of force used in effecting this particular seizure and determined that it was minor; the court noted on the record and in its findings that the only injuries to DuVall were from falling to the floor and the police dog bites to his right leg and calf, and that the injuries "tend to be rather minor in terms of what could have been the consequences if indeed the dog had not been

used; if the police had merely gone in, seen movement, and merely started shooting themselves." (Appellant's Excerpt of R., at 35.) In his own proposed statement of facts, DuVall indicates no permanent physical restriction, only some alteration of sensitivity on his right leg, itching, and sensitivity to pressure which causes discomfort when DuVall wears ski boots. (Appellant's Excerpt of R., at 57.)

Moreover, the dog in this case was used under very controlled circumstances. The dog was used in a confined space the width of a room in a trailer, within the control of its handler, released DuVall within a very short time, and inflicted relatively minor injuries. These facts are a far cry from the infliction of severe injuries by the dog out of the sight and control of its handler in Chew, or described by DuVall when he decries any use of a police dog as unconstitutional.

In sum, all the factors applicable to the existence of probable cause to take DuVall into custody, to the existence of exigent circumstances justifying the warrantless entry, and to the officers' use of the dog in this case cut in favor of the City, not DuVall. The Court of Appeals' opinion is correct and consistent with prevailing constitutional standards. (Graham v. Connor, supra, 490 U.S. at 396; Mincey v. Arizona, supra, 437 U.S. at 392;

Maag v. Wessler, supra, 960 F.2d at 775; United States v. Turner, supra, 926 F.2d at 886.) DuVall's petition for writ of certiorari should therefore be denied.

B. The Questions Raised by DuVall are Based on Mischaracterizations of the Evidence and the Court of Appeals' Opinion, and on DuVall's Failure to Distinguish Between Psychiatric Detentions and Criminal Arrests.

Each of the questions which DuVall has raised is, as discussed below, based on his inaccurate or incomplete rendition of the facts in this case, mischaracterization of the holdings in the Court of Appeals' opinion, or the result of his failure to understand the fundamental differences in the nature of psychiatric detentions versus criminal arrests.

1. The District Court and Court of Appeals did not refuse to consider evidence submitted by DuVall.

In his first question and reason for granting the writ, DuVall claims that the lower courts refused to consider evidence which he submitted. This contention is demonstrably incorrect.

There is nothing in the record indicating that the lower courts refused to consider DuVall's evidence; it is

simply his inference based on the courts' declining to find his exhibits useful in analyzing the facts of this particular case. This inference is clearly contradicted by the District Court's order denying DuVall's motion to correct its findings of fact, in which the Court explicitly stated that it had considered the moving papers submitted by DuVall. (Appellant's Excerpt of R., at 273.)

It is not surprising that the lower courts declined to incorporate DuVall's exhibits into the analysis of this case. Among those exhibits, for instance, was a videotape of a dog apparently apprehending an criminal suspect who had been fleeing from the Los Angeles Police Department; the suspect was already on the ground while the dog was biting him. This videotape, which proves nothing about Santa Monica Police Department policy or depict any circumstances remotely like DuVall's particular case, is of no use in analyzing the circumstances of this case.

Similarly, declarations and photographs regarding severe injuries that police dogs from other jurisdictions have inflicted in different contexts pursuant to their different policies have no bearing on the reasonableness of the Santa Monica Police Department policies or on the relatively minor injuries sustained by DuVall. Nor are declarations opining that the officers could have used alternative methods determinative of the constitutionality of

the officers' actions, as this Court has recognized: "The reasonableness of any particular governmental activity does not necessarily or invariably turn on the existence of alternative 'less intrusive means.'" (Illinois v. Lafayette, 462 U.S. 640, 647 (1983).)

For all these reasons, the lower courts were entirely correct in considering DuVall's exhibits to his motion to correct the statement of facts, but ultimately deeming them not useful in analyzing this case.

2. Contrary to DuVall's argument, the police are not permitted to treat persons who are dangers to themselves like criminal suspects, nor were DuVall's non-criminal statements that he wanted to kill others the sole basis for the officers' conduct.

DuVall has two separate contentions in his second reason for granting the writ. First, he contends that the result of this case would be that police are permitted to treat persons who are dangers to themselves like criminal suspects. Second, he asserts that DuVall's non-criminal statements that he wanted to kill others should not be allowed to justify the officers' use of force in this case, implying that this was the sole or primary reason for the

officers' use of force.

First, police are not permitted to treat persons who are dangers to themselves like criminal suspects. There are fundamental and necessary distinctions between seizures and treatment of the person in a psychiatric detention versus a criminal arrest.

Protective psychiatric detentions are different from criminal arrests in several critical respects. Principal among these is that the person detained is restrained for his or her own safety as a prelude to treatment. In California, protective psychiatric detention results in speedy medical evaluation and medical treatment only as necessary. If following this initial evaluation a mental health professional determines that there is no need for further protective detention, the person is unconditionally and promptly released. (Cal. Welf. & Inst. Code §§ 5151, 5152.) This, of course, is a far cry from the typical criminal arrest, which can result both in pre-trial jailing of up to 48 hours (County of Riverside v. McLaughlin, 502 U.S. 44 (1991)) and lengthy preliminary court hearings.

As a result of the profound differences between a protective psychiatric detention and a criminal arrest, the calculus of what constitutes an "unreasonable seizure" and "excessive" force in the two situations is necessarily different.

The amount of force deemed reasonable in effectuating a criminal arrest will vary depending upon factors such as the seriousness of the crime, its likely punishment, what is known about the suspect's propensity for dangerous conduct, or whether or not the suspect is fleeing or resisting the arrest. (Tennessee v. Garner, 471 U.S. 1, 8-9 (1985); Graham v. Connor, supra, 490 U.S. 386, 396; Chew v. Gates, supra, 27 F.3d 1432, 1440-1442.)

In protective psychiatric encounters, the landscape is vastly different. In such settings, an officer seeks to interject him or herself to protect, not harm, the individual. While, as in this case, force may be necessary, and may resemble that used to effect a criminal arrest, the purpose of the force skirts wide of punishment and is designed to ameliorate a harm, not exacerbate it.

In effecting protective psychiatric custody, so long as there is reasonable cause to believe that a person is a danger to him or herself or to others, and so long as the force used is limited in scope and duration and is reasonably designed to secure the person so that he or she cannot harm him or herself or others in anticipation of further medical care, the requirements of the Fourth Amendment should be satisfied. The facts of this case amply support the lower courts' findings that there was

probable cause to take DuVall into protective psychiatric custody, that the force used was reasonably limited in scope and duration, and reasonably calculated to secure DuVall so that he could not harm himself or others.

Second, DuVall's implication that the officers' use of force was in response solely or primarily to DuVall's non-criminal statements that he felt like killing everybody is unfounded and ludicrous. As fully discussed in the Court of Appeals' opinion and in this opposition, the officers had much more information than that to support entering DuVall's trailer and taking him into protective psychiatric custody: reports from his relatives that he had been depressed and previously suicidal, and had put a gun to his head and clicked it for his mother to hear, along with his erratic behavior and refusal to show officers that he had only a pellet gun when the officers responded to the trailer.

3. The Court of Appeals did not hold that required notices and warnings may be ignored merely because the recipients may not heed them.

DuVall asserts that the Court of Appeals held that the officers' failure to give knock-announce notice of their presence before entering DuVall's trailer could be ignored

because whether or not DuVall would have cooperated is speculative. This mischaracterizes the Court of Appeals' reasoning.

The opinion plainly holds that the justification for excusing the officers from knock-announce requirements is the exigency of the circumstances confronting them. (App. A-4.) It is the presence of such exigent circumstances which render inadequate DuVall's analogies to an officer's failure to give Miranda warnings or to give verbal commands instead of physical coercion; in neither case are exigent circumstances necessarily present.

Finally, as the Court of Appeals observed, it simply does not follow that because DuVall had prior military service and formerly had respect for law and order, he would have complied had he been ordered out of his trailer; in fact, such an assertion is belied by DuVall's actual erratic behavior toward the officers in this case.

4. A warrant is not and should not be constitutionally required for a psychiatric detention.

DuVall challenges the Court of Appeals' determination that there was insufficient time for the officers to get a warrant before entering his trailer, and urges this Court to hold that a warrant must be obtained

before taking a person into custody for psychiatric detention.

Although DuVall argues that the officers could have obtained a telephonic warrant in the one to two hours which the Court of Appeals noted had elapsed between the time DuVall refused to exit his trailer and entry of the officers, there is nothing in the record to support DuVall's assertion. Even assuming that a telephonic warrant would be available, DuVall has no evidence that one could have been obtained in that time frame. Obtaining a telephonic warrant is not a simple procedure and cannot be obtained simply by calling a magistrate. (United States v. Echegoyen, 799 F.2d 1271, 1279 (9th Cir. 1986).) During the one to two hour time period, the officers were not idle, but were busy attempting to evacuate neighbors, discussing possible strategies for handling the situation, obtaining the battering ram and dog, and positioning themselves outside DuVall's trailer.

More importantly, it makes no difference whether or not the officers could have obtained a warrant. In a psychiatric detention context, no such warrant is available, and no such warrant is required. Taking a person into custody in a psychiatric context is fundamentally different from making a criminal arrest.

Taking a person into custody for psychiatric evaluation is analogous to a criminal arrest in the sense that both procedures constitute a seizure of the person. Because of that similarity, the Fourth Amendment requires probable cause to exist before the seizure of the person is effectuated in either situation. (Maag v. Wessler, supra, 960 F.2d at 775.)

The government clearly has a legitimate interest under its parens patriae powers to provide care to its citizens who are unable to care for themselves because of emotional disorders. Similarly, the government possesses the authority, and duty, under its police powers to protect the community from the dangerous tendencies of some who are mentally ill. (Addington v. Texas, 441 U.S. 418, 426 (1979).)

Balanced against the government's interest are the liberty interests of the detained person under the Fourteenth Amendment (Id. at 425) and the rights against unlawful seizure under the Fourth Amendment.

As discussed above in section B.2., there are several distinctions between psychiatric detentions and criminal arrests in which the balance between the government's interest and the individual's liberty interests shift, resulting in necessary differences in procedure.

In the psychiatric context, when an officer takes the person taken into custody, the officer must make an informed but ultimately layperson's judgment, based on the circumstances, that the person's mental condition makes him or her a danger to him or herself or to others, or is gravely disabled. (Cal. Welf. & Inst. Code § 5150; People v. Triplett, supra, 144 Cal. App. 3d 283, 289, 192 Cal. Rptr. 537, 541.) Exigent circumstances are inherent in this situation, in which the government's interest in protecting the individual and other citizens takes precedence over the individual's liberty rights; therefore, a warrant is not required.

To ensure that the psychiatric detainee's liberty is not infringed any more than necessary, procedural safeguards operate to require a quick determination of whether or not continued detention is justified. In California, the detainee is immediately evaluated by a mental health professional, and if the professional determines that no further treatment is needed, the detainee is promptly released, as DuVall was in this case. (Cal. Welf. & Inst. Code §§ 5151, 5152.)

In the criminal arrest context, exigent circumstances are the exception, not the rule. Absent exigent circumstances, the individual's liberty interest takes precedence over the government's interest, and the

additional protective procedure of obtaining a warrant is required before an arrest can be made. Even so, if exigent circumstances exist, no warrant is required in the arrest context, either.

Along with the greater degree of initial protection of the individual's liberty in requiring a warrant, there is a greater degree of certainty justifying restraining the individual's liberty once an arrest is made, compared to the lesser certainty in a psychiatric detention. Whereas the psychiatric detainee is held for only as long as it takes to evaluate him or her within a statutorily prescribed time frame, the arrestee, who poses no immediate danger to himself or others because of mental disability, may be held for up to 48 hours before arraignment and other pretrial procedures.

Thus, there are fundamental differences between psychiatric detentions and arrests which justify not requiring a warrant in one situation, yet requiring one in the other. DuVall's contention that this Court should hold that warrants are required for taking a person into custody for psychiatric detention fails to recognize the sound policy reasons behind the absence of a warrant requirement for psychiatric detentions.

CONCLUSION

For the above-stated reasons, the City respectfully requests that this Court deny the Petition for Writ of Certiorari.

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Respectfully submitted,

MARSHA JONES MOUTRIE
City Attorney
JOSEPH LAWRENCE
Assistant City Attorney
DEE ANN HAYASHI
Counsel of Record
Deputy City Attorney
1685 Main Street
Santa Monica, CA 90401
(310) 458-8336